JD(SF)-13-04
Fremont, California

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

U-HAUL COMPANY OF CALIFORNIA

and Case 32-CA-20665-1

MACHINISTS DISTRICT LODGE 190,
LOCAL LODGE 1173, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO

Michelle M. Smith, Atty., Oakland, California,
for the General Counsel.

Burton F. Boltuch, Atty., Oakland, California,
for Respondent and Employee Willy Tandoc.

David A. Rosenfeld, Atty.
Oakland, California, for the Union.

DECISION

Statement of the Case

JAY R. POLLACK, Administrative Law Judge: I heard this case in trial at Oakland, California, on October 15-17 and 22-23, 2003. On June 18, 2003, Machinists District Local Lodge 1173, International Association of Machinists and Aerospace Workers, AFL-CIO, (the Union) filed the original charge in Case 32-CA-20665-1 alleging that U-Haul Co. of California, (Respondent) committed certain violations of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (29 U.S.C. Section 151 et seq., herein called the Act). On July 3, the Union filed an amended charge alleging that Respondent had violated Sections 8(a)(1) and (3) of the Act. The Regional Director for Region 32 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent on August 27, 2003. The complaint alleges that Respondent unlawfully discharged employees Michael Warren and Andrew Johnson, for their union activities. Further, General Counsel alleges that Respondent interrogated employees about their union activities and that Respondent maintains a provision in its employee handbook, which interferes with employee Section 7 rights. Finally, the complaint alleges that Respondent maintains a mandatory arbitration provision in violation of the Act. Respondent filed a timely answer to the complaint, denying all wrongdoing.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses,[1] and having considered the post-hearing briefs of the parties, I make the following:

Findings of Fact and Conclusions

I. Jurisdiction

Respondent is a California corporation with an office and principal place of business located in Fremont, California where it is engaged in the business of renting trucks and trailers. During the past twelve months, Respondent received gross revenues in excess of $500,000. During the same period of time, Respondent purchased and received goods and services valued in excess of $5,000 from outside the State of California. Accordingly, Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2)(6) and (7) of the Act.

Respondent admits and I find that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. The Facts

Respondent operates a truck and trailer rental business in California. This case concerns Respondent's repair facility in Fremont, California.

Organizing at Respondent's Fremont facility began in late May 2003. On May 26, Michael Warren, a mechanic, contacted the Union. Thereafter, Warren downloaded materials from the Union's Internet website. On June 3, Warren distributed these Union materials to approximately ten employees in Respondent's parking lot, prior to reporting for work. Warren told the employees that the Union was interested in meeting with the employees and that he would try and set up a meeting with the Union. Warren asked the employees to read the Union materials and he directed them to the Union's website. At that time, union organizing activities were taking place at the Las Vegas and Henderson, Nevada, facilities of U-Haul of Nevada.

On June 10 or 11, Warren passed out union information to 10 employees in the parking lot, prior to beginning work. Warren passed out an article about the union organizing at U-Haul of Nevada's Las Vegas facility and copies of a collective-bargaining agreement between the Union and Penske Truck Leasing, Respondent's major competitor. In addition to distributing these materials, Warren spoke to employees about the Union, during lunch and breaks. One of the employees whom Warren spoke with was mechanic Andrew Johnson. After receiving union

[1] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Manufacturing Company*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings, herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

materials from Warren, Johnson began speaking with other employees about his belief that the Union could help the employees improve their wages.

On June 11, Warren spoke with a union representative and they set up a meeting for Respondent's mechanics, for Monday, June 16, after work. On June 12, Warren told as many employees as he could about the scheduled June 16 union meeting. Among the employees that Warren approached about the Union meeting were Willy and Donathan Tandoc. During the afternoon of June 12, Chip Thorn, Respondent's shop manager called an employee meeting in Building C, the shop where Warren and Johnson worked.[2]

Thorn began the meeting by looking at Warren and asking, "What do you know about the Union in Vegas, Warren?" Warren answered that the employees in Las Vegas had voted for the Union and were waiting to see what would happen. Thorn denied that the Union had been voted in and said that the issue had not yet been resolved.[3] Thorn told the employees that it would cost them $250 in initiation fees and $50 in monthly dues to join the Union. He said all that the employees would get for their money was a green card to put in their wallets. He said that if that was what the employees wanted, they should "go right ahead." Thorn said that the Nevada operation was a separate corporation and that even if the Nevada operation became unionized, it did not mean that the California operation would be unionized. Thorn said that U-Haul had separate corporations and that Respondent had a "firewall" to protect it against the Union from Nevada.

Johnson asked Thorn several questions, including questions as to why Respondent's wages were so low and why Penske could afford to pay its mechanics $25 per hour. Thorn answered that the repair shop only charged Respondent $26 per hour making it unfeasible to pay a wage rate of $25 per hour. Thorn reminded Johnson that Thorn was already working on making Johnson a front-end specialist, which would result in a pay increase for Johnson. Thorn told the employees that he had a book in his office with questions and answers about unions. He told employees that if they had questions about the Union, they could come to his office for answers. Thorn told the employees that could talk about the Union before and after work but not while they were on company time. He also told employees to ask questions while at the meeting and not to have "mini-discussions" after the meeting when they should be working. When Thorn ended the meeting, the employees took their afternoon break.

Thorn denied that he started the June 12 meeting by questioning Warren about the Union. Thorn claimed that the subject of the Union was raised by a question from employee Willy Tandoc. Thorn claimed that the purpose of the meeting was to dispel rumors that the facility would be closed or moved. Supervisors Pugh and Contreras testified that they did not

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[2] The Fremont repair facility consists of three buildings: "Building A" houses sales and administrative offices, "Building B" contains the preventative maintenance bay where employees clean vehicles and perform minor mechanical work (such as changing oil and replacing fan belts), and "Building C" houses the maintenance bays where the mechanical work on trucks and trailers is performed.

[3] Machinists Local Lodge 845 filed a representation petition in Case 28-RC-6159 seeking to represent the maintenance employees at U-haul of Nevada's Las Vegas and Henderson, Nevada, facilities. An election was held on May 7, 2003. The employees cast a majority of votes in favor of representation by Local Lodge 845. However, the Employer filed timely objections to the election. On June 10, a hearing was held on the Employer's objections to the election. As of June 12, 2003, there was no ruling on the objections to the election. The hearing officer's report on objections did not issue until July 18, 2003.

hear Thorn discuss the Union. However, these supervisors were not present at the start of the meeting. Warren and Johnson credibly testified that Thorn began the meeting by questioning Warren about the union in Las Vegas. Employee John Soper, still employed as a mechanic, corroborated this testimony. Willy Tandoc was clearly biased and prejudiced in favor of Respondent, his employer.

In July 2003, Tandoc gave the Board a pre-trial affidavit in which he stated that Warren and Johnson asked many questions about the Union, unionization and wages at the June 12 meeting. He claimed that, "The meeting became Johnson and Warren's meeting." At the trial, Tandoc following leading questions by Respondent's attorney, who was also Tandoc's attorney, attempted to testify that he questioned Thorn about Las Vegas and that Thorn only mentioned the Union in order to answer the question. Tandoc otherwise denied that the Union was discussed. After prompting by Respondent's attorney, Tandoc attempted to testify that Board agents exerted undue pressure in taking the affidavit. However, on cross-examination Tandoc testified that the Board agents only stressed the importance of telling the truth and that Tandoc should carefully read the affidavit before signing it. Tandoc was told to make corrections, if necessary and he did, in fact, make a correction on the fifth and final page of the affidavit.

I credit the testimony of Warren and Johnson over that of Thorn. Both Warren and Johnson testified in a straightforward manner. Thorn's testimony, on the other hand, changed frequently at the urging of Respondent's counsel. The demeanor of a witness may satisfy the trier of fact, not only that the witness' testimony is not true, but that the truth is the opposite of his story; for the denial of one who has a motive to deny, may be uttered with such hesitation, discomfort, arrogance or defiance, as to give assurance that he is fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies. I find Thorn to be such a witness. See *Walton Mfg. Co. v. NLRB*, 369 U.S. 404, 408 (1962).

After the meeting, Warren and Johnson took their afternoon break at a picnic table with several other employees. Johnson suggested that Willy Tandoc had told Thorn about the employees' discussion of the Union. Two other employees said they had seen Willy Tandoc talking with Thorn. Warren stated that he did not believe that Tandoc would inform on the employees. Warren said that because Tandoc was Respondent's chief diagnostician, it was only natural that he be involved in frequent conversations with Thorn. Tandoc had another job and left work after the employee meeting. Neither Warren nor Johnson spoke to Tandoc after the employee meeting.

On Friday, June 13, Tandoc did not report to work. Respondent contends that Tandoc did not work because Warren and Johnson had threatened him on June 12. Tandoc gave various reasons for not reporting to work on Friday the thirteenth. The credible evidence leads me to believe that Tandoc did not want to work on Friday the thirteenth and because he "had other things to do." On Saturday June 14, Tandoc returned to work. Warren spoke to Tandoc to obtain the phone number of a mutual friend in Las Vegas. There was no indication that Tandoc was intimated or threatened by Warren. Johnson was not scheduled to work on Saturday.

On June 16, prior to clocking in for work, Tandoc told Warren that he had spoken with their friend in Las Vegas. Tandoc said that the Union had been voted in at two of U-Haul's facilities in Nevada but that the matter was pending in Washington, D.C. Later that same day, Warren approached Tandoc while he was eating with his nephew Donathan Tandoc and asked them to come to the union meeting scheduled for that evening. Tandoc was working his other job and said he would not be able to attend. Warren asked Donathan to remind other employees about the union meeting. Johnson also asked Tandoc and Donathan to attend the union meeting that evening. Donathan revealed that they would not be attending the meeting.

At approximately, 3:15 p.m. Thorn called Warren and Johnson outside of their building. Also present were Patrick Pugh, shop foreman and Thomas Contreras, dispatch manager. Thorn told the two employees that he had spent a whole lot of money having an employee meeting about not discussing the Union and they just violated the rule by talking to Willy Tandoc about the Union. Thorn claimed that Warren and Johnson had threatened Tandoc and that was the reason that Tandoc did not report to work on Friday, June 13. Johnson said that Tandoc was a liar and that he would tell that to Tandoc, "to his face." Thorn said that would not happen and that the two employees were fired. Thorn told the employees that they had an hour to pack up their tools and leave the facility. Finally, Thorn stated, the Union may come in, but the two employees would not be there to see it.

According to Thorn, he learned on the morning of June 16 that Warren and Johnson had told Tandoc to "stop talking to management" and that Tandoc was then too upset to go to work on Friday the 13th. According to Thorn, he corroborated this story by talking to two mechanics. These mechanics were not called to corroborate Thorn's testimony. Thorn then spoke with Tandoc who allegedly claimed that Warren and Johnson had told him not to speak to Thorn. I note that this testimony differs from that of Tandoc. As stated earlier, I do not credit any of Thorn's testimony. As seen below, I do not credit any of Tandoc's testimony.

As Johnson was packing his tools to leave, he told Patrick Pugh, shop foreman, that the alleged threats were completely fabricated. Pugh replied that he had told Thorn that he had never heard Johnson talking about the Union. Pugh then said, "What can I do?"

After terminating Johnson and Warren, Thorn wrote an e-mail to his superiors stating that Johnson and Warren had been discharged because they had "pulled an employee away from the group and harassed him." There was no mention of any alleged threat. General Counsel presented evidence that evidence that Warren and Johnson were given harsher discipline than other employees actually guilty of harassment. In 2002, two mechanics were involved in a confrontation, which included name-calling and the suggestion of a fight. One of these employees was suspended for one day and the other employee was not disciplined at all. Also in 2002, two employees were involved in a shoving match. One employee was suspended and the other given an oral and written warning. None of the four employees involved in these incidents were terminated. Thorn did give examples of employees discharged for threatening co-workers but those incidents involved more serious conduct than that which Thorn falsely accused Warren and Johnson.

At the times material herein, Thorn possessed a U-Haul Human Resources Policy Manual from 1993. The manual included the following advice to avoid unionization and to discourage a union drive beforehand: "Develop some company-minded people who consider any danger to the company as a danger to themselves. They will warn you of union activity, so you will be aware of organization attempts before the union is in the saddle." Thorn testified that he did not read this portion of the policy manual and argued that it was an old manual just sitting in his desk. I need not, and do not credit this self-serving testimony. It appears to me that Willy Tandoc was such a company-minded employee and he certainly attempted to help Thorn justify the discharges of Warren and Johnson.

At the end of September, Warren stopped Tandoc on a street near Tandoc's home and told Tandoc that he still respected Tandoc and that they were still friends in spite of Tandoc's involvement with Warren's discharge. Tandoc told Warren that Respondent had provided him with an attorney and if anybody contacted him, Tandoc was supposed to contact the attorney. Tandoc told Warren that Respondent was paying for his attorney. In addition, Tandoc said that

he had told Thorn that he was not going to lie for him. Tandoc admitted that Warren had not threatened or harassed him. With respect to missing work on Friday June 13, Tandoc said that he didn't work that day because it was Friday the thirteenth and he had other plans and not because of any threats.

Tandoc's testimony was self-contradictory, shifting, and evasive. In his pre-trial affidavit Tandoc stated, "I did not tell Thorn that Warren and Johnson physically confronted me. I did not tell Thorn that Warren and Johnson approached me together. I did not tell Thorn that Warren and Johnson blocked my way. I did not tell Thorn that I feared for the safety of my family or myself." According to the affidavit, after Thorn approached him, Tandoc told Thorn that Warren said, "Someone ratted me out." Tandoc told Thorn that Johnson said, "What kind of trouble are you starting." After Respondent provided him with an attorney, he attempted to backtrack on his affidavit and falsely accused the Board agents of misconduct. At the trial Tandoc, attempting to bolster Respondent's case, testified that Johnson and Warren scared him. Based on Tandoc's testimony and the inconsistencies in his pre-trial statements, I am convinced that Tandoc changed his testimony whenever he thought it would assist Respondent's case. It appeared that in testifying, Tandoc was attempting to please Respondent's attorney rather than trying to answer questions truthfully. Under these circumstances, I cannot credit any of his testimony.

B. Respondent's Employee Handbook

Respondent distributes an orientation packet to all new hires. The orientation packet includes an employee handbook and an acknowledgement form. The first text page of the employee handbook is entitled "What About Unions?" and states Respondent's preference to be union free. Respondent states that employees do not need a union or outside third party to resolve workplace issues. The section ends with the following statement: "*Furthermore, you should understand that if your supervisor cannot resolve your problems, you are expected to see me*." [Emphasis in original] The statement is immediately followed by the name, "E. J. (Joe) Shoen, chairman of the board." Shoen is president and chairman of the board of U-Haul International, Respondent's parent corporation. A copy of this page of the handbook was also posted on a bulletin board at the repair facility. A week after he discharged Johnson and Warren, Thorn posted an updated "What About Unions?' page which contained the statement at issue herein.

C. Respondent's Arbitration Policy

On May 20, 2003, Thorn distributed Respondent's arbitration policy entitled "U-Haul Arbitration Policy" and a separate document entitled "U-Haul Agreement to Arbitrate", at an employee meeting. When Thorn handed out these documents he explained that the purpose was to cut litigation expenses. He told employees that they did not have to sign the arbitration agreement but that it would make him look bad if the employees didn't sign the agreement; he also stated that if employees didn't sign the agreement, they would probably not be able to work. The policy included the statement, "Your decision to accept employment or to continue employment with [Respondent] constitutes your agreement to be bound by the [arbitration policy]." Most but not all of Respondent's employees signed an agreement to arbitrate.

The arbitration policy covers:

> All disputes relating to or arising out of an employee's employment with [Respondent] or the termination of that employment. Examples of the type of disputes or claims coved by the [U-Haul Arbitration Policy] include, but are not limited to, claims for wrongful termination of employment, breach of contract, fraud, employment discrimination, harassment or retaliation under the Americans With Disabilities Act, the Age

Discrimination in Employment act, Title VII of the Civil rights Act of 1964 and its amendments, the California Fair employment and Housing act or any other state or local anti-discrimination laws, tort claims, wage or overtime claims or other claims under the Labor Code, or any other legal or equitable claims and causes of action recognized by local, state or federal laws or regulations.

There is no evidence that the arbitration policy has been enforced. There is also no evidence that any employee was disciplined for failing to sign an arbitration agreement. Respondent argues that the arbitration clause only applies to court proceedings. However, I find the language of the arbitration policy that it applies to any dispute or claim recognized by federal laws or regulations is certainly broad enough to apply to NLRB proceedings.

D. Analysis and Conclusions

1. The "What About Unions?" Page of the Employee Handbook

As stated above, Respondent's handbooks states Respondent's opinion that a union would not be in the best interests of either the employer or its employees. Respondent states that employees may express their problems without having a union involved. Respondent's opinion is then followed by the mandatory language, "*furthermore, you should understand that if your supervisor cannot resolve your problems, you are expected to see me."*

Respondent's policy unlawfully interferes with the statutory right of employees to communicate their employment-related complaints to persons and entities other than the Respondent, including fellow employees, a union or the Board. Although the policy does not on its face prohibit employees from approaching someone other than the Respondent concerning work-related complaints, it provides that employees first report such complaints to a supervisor and if the issue is not resolved, employees are "expected" to report the problems to Shoen. I find that the Respondent's rule does not merely state a preference that the employees follow its policy, but rather that compliance with the policy is required. I further find that this requirement reasonably tends to inhibit employees from bringing work-related complaints to, and seeking redress from, entities other than the Respondent, and restrains the employees' Section 7 rights to engage in concerted activities for collective bargaining or other mutual aid or protection. See *Kinder-Care Learning Centers*, 299 NLRB 1171, 1172 (1990).

2. The Mandatory Arbitration Policy

Employer attempts to limit or bar the exercise of statutory rights, particularly those of individual employees as distinguished from those of their agents, have been held unlawful. See *Athey Products Corp.*, 303 NLRB 92, 96 (1991); *Isla Verde Hotel Corp.*, 259 NLRB 496 (1981), enfd. 702 F.2d 268 (1st Cir. 1981); *Reichhold Chemicals*, 288 NLRB 69 (1988)). The Board has regularly held that an employer violates the Act when it insists that employees waive their statutory right to file charges with the Board or to invoke their contractual grievance-arbitration procedure. *Athey Products*, supra; *Kinder-Care Learning Centers*, supra; *Retlaw Broadcasting Co.*, 310 NLRB 984 (1993).

Respondent's mandatory arbitration provision covers all disputes relating to or arising out of an employee's employment with Respondent. Claims covered include wrongful termination, employment discrimination and claims recognized by federal laws or regulations. I find that this policy reasonably tends to inhibit employees from filing charges with the Board, and, therefore, restrains the employees' Section 7 rights to engage in concerted activities for collective bargaining or other mutual aid or protection.

3. The Discharges of Warren and Johnson

In *Wright Line, A Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989, the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's Wright Line test in *NLRB v. Transportation Corp.*, 462 U.S. 393, 399-403 (1983).

It has long been held that there are five principal elements that constitute a prima facie case insofar as Section 8(a)(3) and (1) are concerned. The first is that the employee alleged to be unlawfully disciplined must have engaged in union or protected activities. The second is that the employer knew about those protected activities. Third, there must be evidence that the employer harbored animus against those individuals because of such activities. Fourth, the employer must discriminate in terms of employment. Finally, the discipline must usually be connected to the protected activity in terms of timing. See e.g*., Goodyear Tire & Rubber Co.*, 312 NLRB 674 (1993).

I find that General Counsel has made a very strong prima facie showing that Respondent was motivated by Warren and Johnson's union activities in discharging the employees. Warren contacted the Union and distributed union materials. Johnson asked questions about wages at the employee meeting. Thereafter, Warren and Johnson invited employees, including Tandoc to the union meeting of June 16. At the June 12 meeting, Thorn started the meeting by asking Warren two questions about the union in Las Vegas. On June 16 at the exit interview, Thorn stated that the two employees had broken the rule about talking about the Union. After, discharging the employees for threatening Tandoc, conduct for which they were innocent, Thorn stated, the Union may come in, but the two employees would not be there to see it.

The General Counsel has also demonstrated Respondent's animus toward the Union. In addition to the Respondent's lawful statements indicating that it was opposed to the Union, Respondent directed its employees to bring work problems or issues to their supervisors and Shoen, implying that employees should not contact a union The Respondent's animus was further demonstrated by Thorn's comments at the June 12 meeting and particularly Thorn's comments at the exit interview. Having shown knowledge, animus, and that the discharges occurred immediately after Respondent apparently gained knowledge of Warren's and Johnson's union support, the General Counsel has made out a very strong prima facie case that employees' union sympathies were the motivating factor in the discharge decision.

My finding that Thorn's reason for the discharges-—threats to Tandoc--was false amounts to a finding that it was a pretext. The failure of his testimony in this respect to withstand scrutiny not only dooms Respondent's defense but it buttresses the General Counsel's affirmative evidence of discrimination. See *Limestone Apparel Corp.*, 255 NLRB 722 (1981). Respondent's patently false reason for the discharge supports an inference that it had an unlawful motive for the discharge. See, e.g., *Keller Manufacturing Company, Inc.*, 237 NLRB 712, 716 (1978); *Party Cookies, Inc.*, 237 NLRB 612, 623 (1978); *Capital Bakers, Inc.*, 236 NLRB 1053, 1057 (1978). See also *Shattuck Denn Mining Corporation (Iron King Branch) v. N.L.R.B.*, 362 F.2d 466, 470 (9th Cir. 1966). I draw the inference that the motive of the discharge is one Respondent desires to conceal--a discriminatory and unlawful motive.

The burden shifts to Respondent to establish that the same action would have taken place in the absence of the employees' union and protected concerted activities. Under Wright Line, Respondent must show that it would have discharged these employees anyway, absent their union activities. Since I found the proffered reasons for the discharges incredible, I find that the Respondent has not met its Wright Line burden. Therefore, I find that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Michael Warren and Andrew Johnson because of their union activities.

4. The Interrogation

Interrogation of employees is not unlawful per se. In determining whether or not an interrogation violates Section 8(a)(1) of the Act, the Board looks at whether under all the circumstances the interrogation reasonably tends to interfere with, restrain or coerce employees in the exercise of their Section 7 rights. *Rossmore House*, 269 NLRB 1176 (1984); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

Here, I find that the interrogation of Warren tended to interfere with and restrain employees in their organizing activities. First, the interrogation took place in the presence of approximately 30 of Respondent's employees by Thorn the highest-ranking official at the repair facility. This was the first indication that Respondent had knowledge of the fledgling organizing effort. The interrogation took place during a meeting at which Thorn expressed an opinion that employees would gain nothing by bringing in a union. Third, Thorn discriminatorily discharged Warren and Johnson shortly after this interrogation. Under these circumstances, employees would reasonably conclude that union activities would lead to adverse action by Thorn and Respondent. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act.

Conclusions of Law

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging employees Michael Warren and Andrew Johnson because of their Union and protected concerted activities, Respondent violated Section 8(a)(3) and(1) of the Act.

4. By unlawfully interrogating employees Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. By requiring employees to execute waivers of their rights to take legal action with respect to their hire, tenure, and terms and conditions of employment, and thereby requiring a waiver of the right to file NLRB charges, Respondent violated Section 8(a)(1) and (4) of the Act.

6. By requiring employees to bring work-related complaints to their supervisors and then to Respondent's president and chairman of the board, and thereby implying that employees could not discuss such problems with other employees, unions or the NLRB, Respondent violated Section 8(a)(1) of the Act.

7. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

Respondent must offer Michael Warren and Andrew Johnson full and immediate reinstatement to the positions they would have held, but for the unlawful discrimination against them. Further, Respondent must make Warren and Johnson whole for any and all loss of earnings and other rights, benefits and privileges of employment they may have suffered by reason of Respondent's discrimination against them, with interest. Backpay shall be computed in the manner set forth in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); See also, *Florida Steel Corp.*, 231 NLRB 651 (1977) and *Isis Plumbing Co.*, 139 NLRB 716 (1962).

Respondent must also expunge any and all references to its unlawful discharge of Warren and Johnson from its files and notify Warren and Johnson in writing that this has been done and that the unlawful discipline will not be the basis for any adverse action against them in the future. *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

In addition, Respondent must rescind the portion of its “What About Unions?” rule or policy in its employee handbook that that requires employees to report work-related complaints or problems to their supervisors and then to the president and chairman of the board of U-Haul International.

Respondent must remove from its files all unlawful waivers of the right to take legal action executed by employees of Respondent and notify, in writing, each present or former employee who executed such waiver that this has been done and that the waiver would not be used in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

Respondent, U-Haul Company of California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

   a. Interrogating employees about their union beliefs or activities.

   b. Discharging or otherwise discriminating against employees because they engaged in union activities or other protected concerted activities within the meaning of Section 7 of the Act.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

c. Discriminatorily requiring employees to execute waivers of their rights to take legal action with respect to their hire, tenure, and terms and conditions of employment.

d. Maintaining a “What About Unions?” rule or policy that requires employees to report work-related complaints or problems to their supervisors and then to the president and chairman of the Board.

e. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

a. Within 14 days from the date of this Order, offer reinstatement to Michael Warren and Andrew Johnson to the positions they would have held, but for the discrimination against them.

b. Make whole Michael Warren and Andrew Johnson for any and all losses incurred as a result of Respondent's unlawful discharge of them, with interest, as provided in the Section of this Decision entitled "The Remedy".

c. Within 14 days from the date of this Order, expunge from its files any and all references to the discriminatory discharges of Michael Warren and Andrew Johnson and notify them in writing that this has been done and that Respondent's discrimination against them will not be used against them in any future personnel actions.

d. Remove from Respondent’s files all unlawful waivers of the right to take legal action executed by employees of Respondent and notify, in writing, each present or former employee who executed such waiver that this has been done and that the waiver would not be used in any way.

e. Rescind or modify its “What About Unions?” rule or policy by deleting those portions of the rule or policy that require employees to report work- related complaints or problems to their supervisors and then to the president and chairman of the board.

f. Preserve, and within 14 days of a request make available to the Board or its agents for examination and copying, all payroll records, timecards, social security payment records, personnel records and reports, and all other records necessary to determine the amount of backpay due under the terms of this Order.

g. Within 14 days after service by the Region, post at its Fremont, California, facilities copies of the attached Notice marked "Appendix".[5] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by

[5] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Respondent's authorized representative, shall be posted for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced or covered by other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the attached notice to all current employees and former employees employed by the Respondent at any time since June 12, 2003.

h. Within 21 days after service by the Region, file with the Regional Director, a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

Dated, San Francisco, California, February 6, 2004.

_____
Jay R. Pollack
Administrative Law Judge

JD(SF)-13-04
Fremont, California

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge employees or otherwise discriminate against employees in order to discourage union activities or other protected concerted activities.

WE WILL NOT coercively interrogate employees about their union beliefs or activities.

WE WILL NOT require you to execute waivers of your rights to take legal action with respect to the hire, tenure, and terms and conditions of employment.

WE WILL NOT expressly or impliedly limit your access to the National Labor Relations Board.

WE WILL NOT maintain a "What About Unions?" rule or policy that requires you to report work-related complaints or problems to your supervisors and then to the president and chairman of the Board. Our employees are free to discuss such issues with other employees, unions or regulatory agencies.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer reinstatement to Michael Warren and Andrew Johnson to the positions they would have held, but for the discrimination against them.

WE WILL make whole Michael Warren and Andrew Johnson for any and all losses incurred as a result of our unlawful termination of their employment, with interest.

WE WILL expunge from our files any and all references to the unlawful discharges of Michael Warren and Andrew Johnson and notify them in writing that this has been done and that the fact of this discrimination will not be used against them in any future personnel actions.

WE WILL remove from our files all unlawful waivers of the right to take legal action executed by our employees and notify, in writing, each present or former employee who executed such waiver that this has been done and that the waiver will not be used in any way. Our employees are free to file petitions or charges with the National Labor Relations Board.

WE WILL rescind or modify our "What about Unions?" rule or policy by deleting those portions of the rule or policy that that require you to report work-related complaints or problems to your supervisors and then to the president and chairman of the board. Our employees are free to discuss such issues with other employees, unions or regulatory agencies.

U-HAUL CO. OF CALIFORNIA
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1301 Clay Street, Federal Building, Room 300N, Oakland, CA 94612-5211
(510) 637-3300, Hours: 8:30 a.m. to 5 p.m.

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer, (510) 637-3270.